

NOTICE OF RESTORATION PLANNING FOR OIL SPILL

ACTION: Notice of Intent to Conduct Restoration Planning (NOI) for Grand Bay Oil Spill, Plaquemines Parish, LA.

AGENCIES: Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Louisiana Coastal Protection and Restoration Authority (CPRA); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF) (collectively, the "Trustees").

AUTHORITIES: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 *et seq.*, and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA), La. Rev. Stat. 30:2451 *et seq.*, are the principal federal and state statutes, respectively, authorizing designated federal and state agencies and tribal officials to act on behalf of the public to (1) assess damages for injuries to natural resources and services resulting from a discharge of oil or the substantial threat of a discharge and (2) develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured resources. OPA implementing regulations may be found at 15 C.F.R. Part 990 and OSPRA regulations at LA. ADMIN. CODE tit. 43, pt. XXIX.

By letter dated March 27, 2017, and pursuant to 33 U.S.C. § 2706(b)(3), the Governor of Louisiana designated the Trustees to act on behalf of the public under OPA. Lobo Operating, Inc. ("Lobo"), as the owner and/or operator of the facility from which oil was discharged, is the identified Responsible Party and is therefore liable according to 33 U.S.C. § 2702 and La. Rev. Stat. 30:2480 for any natural resource damages resulting from the Incident.

PURPOSE: As required by 15 C.F.R. §§ 990.41 and 990.42, the Trustees have determined that impacts to natural resources and services resulting from the unauthorized discharge of oil from Lobo's Grand Bay Tank Battery #1 near Venice, Louisiana beginning on or about April 1, 2019 (hereinafter, the "Incident") (La. NRDA case file # LA2019_0401_1830) warrant proceeding with a Natural Resource Damage Assessment (NRDA) to pursue restoration for this Incident. In accordance with 15 C.F.R. § 990.44 and L.A.C. 43:XXIX.123, the Trustees are issuing this NOI to inform the public that they are proceeding to the Restoration Planning Phase of the NRDA, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration as described in subpart E of 15 C.F.R. Part 990. The Trustees will be opening an Administrative Record (AR) pursuant to 15 C.F.R. § 990.45 and L.A.C. 43:XXIX.127 to document the basis for the Trustees' decisions pertaining to injury assessment and selection of restoration alternatives. The AR can be found at <https://data.losco.org> under "Search Administrative Records".

SUMMARY OF INCIDENT: On or about April 1, 2019, a bulk line connected to Lobo's Grand Bay Tank Battery #1 near Venice, LA experienced a failure (NRC #1241638, LSP #19-01418). An estimated 20 barrels of crude oil was released into the adjacent waterway and surrounding marsh. Response actions lasted for several weeks and included, among others, hard and sorbent booming, use of scare cannons (to haze wildlife out of impacted areas), various washing techniques, flushing of impacted marsh and use of skimmers to collect pooled oil, cutting and removal of oiled *Phragmites australis*, and collection and disposal of over 5,300 bags of oily vegetation, trash and debris. Natural resources within the area that provide services to the public

were adversely impacted by the discharged oil and response actions, including surrounding coastal herbaceous wetland and wildlife.

The Trustees began the Pre-assessment/field investigation Phase of the NRDA in accordance with 15 C.F.R. § 990.43 and L.A.C. 43:XXIX.117 to determine if they had jurisdiction to pursue restoration under OPA and OSPRA, and, if so, whether it was appropriate to do so. During the Pre-assessment Phase, the Trustees collected and analyzed, and are continuing to analyze, the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and/or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated assessment activities as part of the Restoration Planning Phase. Activities included, among other things, collection and review of response information and drone imagery, conducting a Trustee site visit to collect qualitative, quantitative and observational data about oiled habitats and wildlife, and oil sample collection.

Under the NRDA regulations applicable to OPA and OSPRA, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (NOI) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met. This NOI announces that the Trustees have made the determination to proceed with restoration planning to evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and losses resulting from the Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including services, and to determine the need for, and the type and scale of restoration alternatives.

DETERMINATIONS

Determination of Jurisdiction: The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41 and L.A.C. 43:XXIX.101:

1. The Incident resulted in the discharge of oil into or upon navigable waters of the United States. Such occurrence constitutes an “incident” within the meaning of 15 C.F.R. § 930.30.
2. The Incident was not authorized under a permit issued pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. § 1651, *et seq.*
3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA and OSPRA.

Determination to Conduct Restoration Planning: The Trustees have determined pursuant to 15 C.F.R. § 990.42(a) that:

1. Data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources have resulted from the Incident, as described above.
2. The response actions did not adequately address the injuries resulting from the Incident.

3. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident.

Based upon the foregoing determinations, the Trustees intend to proceed with restoration planning for this Incident.

Determination to Utilize Expedited Assessment Procedure to Assess Injury: The Trustees have made the following findings pursuant to La. Rev. Stat. 30:2480 and L.A.C. 43:XXIX.121.H.4:

1. The Incident involved an unauthorized discharge of crude oil, or other oil that in the sole discretion of the Trustees interacts with the environment in a manner similar to crude oil.
2. The Incident occurred in the Louisiana coastal area, with oiling conditions and/or response activities as described at L.A.C. 43:XXIX.121.H.4, impacting coastal herbaceous wetland or coastal forested wetland.
3. The Incident has limited observable mortality.
4. Restoration activities can be speedily initiated and/or the quantity of oil discharged does not exceed one thousand gallons.

Based upon the foregoing findings, the Trustees have determined that utilization of the compensation schedule found at L.A.C. 43:XXIX.121.H.4 and allowed by 15 C.F.R. §990.27(b)(1)(iii) is appropriate. The purpose of utilizing this expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources. La. Rev. Stat. 30:2480.

PUBLIC PARTICIPATION: The Trustees invite the public to participate in restoration planning for this Incident. Public participation in decision-making is encouraged and will be facilitated through a publically available AR (described above) and publication of public notices in the *Louisiana Register*. Opportunities to participate in the process will be provided by the Trustees at important junctures throughout the planning process and will include requests for input on restoration alternatives and review of planning and settlement documents. Public participation is consistent with all state and federal laws and regulations that apply to the NRDA process, including Section 1006 of OPA, 33 U.S.C. § 2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of OSPRA, La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, LA. ADMIN. CODE tit. 43, pt. XXIX, ch. 1.

FOR FURTHER INFORMATION: For more information please contact the Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6606 (Attn: Gina Muhs Saizan).